

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GABRIEL VERDUGO,

Petitioner,

v.

CHRISTIAN PFEIFFER, WARDEN,

Respondent.

Case No. 1:22-cv-00454-HBK

ORDER DENYING PETITIONER’S MOTION
FOR EVIDENTIARY HEARING

ORDER DENYING APPOINTMENT OF
COUNSEL

(Doc. No. 3)

Before the court is Petitioner’s motion for an evidentiary hearing and motion to appoint counsel. (Doc. No. 3). Petitioner, a state prisoner, has pending a *pro se* petition for writ of habeas corpus filed under 28 U.S.C. § 2254. (Doc. No. 1, Petition). Petitioner requests an evidentiary hearing “on all constitutional claims presented in the instant habeas corpus petition,” and further requests appointment of counsel because he is “completely ignorant of the law, and cannot afford to employ professional counsel in order to fully and fairly protect [his] legal interests.” (Doc. No. 3).

A. Motion for Evidentiary Hearing

Evidentiary hearings are granted only under limited circumstances in habeas proceedings. *See* 28 U.S.C. § 2254(e)(2)(A)(ii). Petitioner filed the instant motion before Respondent was directed to respond to the Petition. The Court will review the briefing and make findings and

1 recommendations in due course. If the Court determines that an evidentiary hearing is warranted,
 2 it will schedule one at that time. *See* Rules Governing Section 2254 Cases, R. 8(a).

3 **B. Motion for Appointment of Counsel**

4 There is no automatic, constitutional right to counsel in federal habeas proceedings. *See*
 5 *Coleman v. Thompson*, 501 U.S. 722, 752 (1991); *Anderson v. Heinze*, 258 F.2d 479, 481 (9th
 6 Cir. 1958). The Criminal Justice Act, 18 U.S.C. § 3006A, however, authorizes this court to
 7 appoint counsel for a financially eligible person who seeks relief under § 2241 when the “court
 8 determines that the interests of justice so require.” *Id.* at § 3006A(a)(2)(B); *see also Chaney v.*
 9 *Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). Moreover, the *Rules Governing Section 2254 Cases*
 10 *in the United States District Courts* require the court to appoint counsel: (1) when the court has
 11 authorized discovery upon a showing of good cause and appointment of counsel is necessary for
 12 effective discovery; or (2) when the court has determined that an evidentiary hearing is warranted.
 13 *Id.* at Rs. 6(a) and 8(c).

14 Based upon the record, the Court finds Petitioner has not demonstrated that appointment
 15 of counsel is necessary. Petitioner was able to file his habeas petition without the aid of counsel,
 16 and the Court finds that the claims raised therein do not appear to be complex. Further, the Court
 17 does not find the circumstances of this case indicate that appointed counsel is necessary to
 18 prevent due process violations. Provided Petitioner meets the criteria set forth in 18 U.S.C. §
 19 3006A, the Court will consider appointing counsel to represent Petitioner if, after reviewing the
 20 record in further detail, the Court later finds good cause to permit discovery or decides that an
 21 evidentiary hearing is warranted in this matter.

22 Accordingly, it is ORDERED:

23 Petitioner’s motion for an evidentiary hearing and for appointment of counsel (Doc. No.
 24 3) is **DENIED without prejudice**.

25 Dated: April 25, 2022

26 
 27 HELENA M. BARCH-KUCHTA
 28 UNITED STATES MAGISTRATE JUDGE

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